

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
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U.S. BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

David Pratt and Naomi McKenzie Pratt,

Debtors.

C/A No. 96-73679-W

JUDGMENT

Chapter 7

ENTERED

U.S.S.

Based upon the findings of the Court as recited in the attached Order, the motion of the Debtor to avoid the judicial lien of NationsBank in the amount of \$5,500 pursuant to 11 U.S.C. § 522(f) is granted. The Debtors or any other party in interest may transcribe and file this judgment along with a copy of any future orders of discharge of the Debtors, in any court of competent jurisdiction in which the underlying NationsBank's judgment has been recorded to reflect that NationsBank's lien has been voided.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
August 13, 1996.

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IN RE:

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ORDER

Chapter 7

**ENTERED**

AUG 14 1996

R. S. S.

THIS MATTER comes before the Court upon the objection of NationsBank of South Carolina, N.A. ("NationsBank"), to the Debtors' motion to avoid pursuant to 11 U.S.C. § 522(f)<sup>1</sup>, the 1994 judicial lien in the amount of \$5,500 of NationsBank which has attached to the Debtors' residence located at 1316 Mechanicsville Hwy., Darlington County, South Carolina ("residence") and the Debtors' request that NationsBank be directed to cause the judicial lien to be marked satisfied after the Debtors are granted their discharge in this Chapter 7 proceeding.

Section 522(f)(1) provides in part that:

the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is --  
(A) a judicial lien.

Based upon the Debtor's estimate of the value of the residence at \$35,670 and the first mortgage in the amount of \$29,000, NationsBank does not dispute that the lien can be avoided pursuant to § 522(f)(1) as it clearly impairs the Debtors' \$10,000 homestead exemption. However,

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<sup>1</sup> Further references to the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, shall be by section number only.

*JW* -1-

NationsBank disputes that it can be required by this Court to have the lien marked satisfied on the state court's judgment rolls. NationsBank asserts that in such matters South Carolina Code Annotated § 15-35-630 is the exclusive remedy of the Debtor. That section provides as follows:

Any time after one year has elapsed since a bankrupt was discharged from his debts, pursuant to the acts of Congress relating to bankruptcy, the bankrupt, his receiver, trustee or any other interested person may apply, upon proof of the bankrupt's discharge, to the court in which a judgment was rendered against him or, if rendered in a court not of record, to the court of which it has become a judgment by docketing it therein for an order directing the judgment to be cancelled and discharged of record. If it appears upon the hearing that the bankrupt has been discharged from the payment of that judgment or the debt upon which such judgment was recovered, an order must be made directing the judgment to be cancelled and discharged of record. And thereupon the clerk of the court shall cancel and discharge the judgment by marking on the docket thereof that it is cancelled and discharged by order of the court, giving the date of entry of the order of discharge.

The provisions of this section shall not operate to discharge any debt, judgment or claim that is not dischargeable under the Federal Bankruptcy Act or the law of this State.

South Carolina Code Annotated § 15-35-630. NationsBank takes the position that pursuant to this section, despite the entry of an order avoiding the lien, this Court does not have the jurisdiction or authority to compel NationsBank to have the lien or judgment marked "satisfied".

As an initial matter, it must be noted that this Court has jurisdiction over NationsBank due to its filing of the objection to the Debtors' motion to avoid the lien. As for NationsBank's argument that South Carolina Code Annotated § 15-35-630 is the Debtor's sole remedy of removing the lien from the state court records, NationsBank relies upon the Ducker v. Standard Supply Co., Inc., 311 S.E.2d 728 (S.C. 1984) opinion, which held as follows:

Under South Carolina law, a judgment represents a judicial

declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money. A judgment may also establish a lien upon the real property of the debtor. Section 15-35-810 of the Code. The Discharge of Bankrupt Order filed in the United States District Court released Mrs. Ducker from any judgment obtained in any court before or after the discharge as a determination of the personal liability of Mrs. Ducker. A discharge of the personal liability of a debt or judgment does not affect the lien securing that debt or judgment. Wagener & Co. v. Brown Bros., 82 S.C. 131, 62 S.E. 513 (1909).

Ducker v. Standard Supply Co., Inc., 311 S.E.2d at 729, 730.

This Court agrees with the Ducker v. Standard Supply Co., Inc. holding that a discharge in a Chapter 7 alone will not satisfy or void a judicial lien. There is a difference between the avoidance of a lien pursuant to § 522(f) and the discharge of the underlying personal liability judgment pursuant to § 524. It is undisputed by NationsBank that the judicial lien created by the filing of the judgment can be avoided at this time by this Court pursuant to § 522(f). Ducker v. Standard Supply Co., Inc. recognizes that the lien, while separate from the personal liability created by the judgment, may itself be avoided through the bankruptcy proceeding.

Several jurisdictions have construed statutes substantially similar to § 15-35-630, and have held a discharge in bankruptcy would not void a judgment lien which attached to the judgment debtor's real property prior to the filing of his bankruptcy petition and which was not voided in the bankruptcy proceedings. Albritton v. General Portland Cement Co., 344 So.2d 574 (Florida 1977); Olsen v. Nelson, 125 Minn. 286, 146 N.W. 1097 (1914); John Leslie Paper Co. v. Wheeler, 23 N.D. 477, 137 N.W. 412 (1912); Bush v. Shepherd, 186 Or. 105, 205 P.2d 842 (1949).

Ducker v. Standard Supply Co., Inc., 311 S.E.2d at 730 (emphasis added).

In my view, this Court has the authority pursuant to § 522(f) and § 105 to order the filing of a copy of any lien avoidance order in the state court record and it is not limited from doing so

by South Carolina Code Annotated § 15-35-630. The avoidance of a judicial lien is a final order of this court and the filing of the accompanying judgment gives it effect. South Carolina Code Annotated § 15-35-630 specifically authorizes the state court clerk of court to record the discharge of the underlying judgment upon the records but it does not limit the Bankruptcy Court's power or the Debtor's standing through the Bankruptcy Court, to implement or carry out relief provided by the Bankruptcy Code. To construe the statute in such a way would violate the Supremacy Clause of the United States Constitution.

Separately, NationsBank asserts that this Court can not require the "satisfaction of the judgment" at this time. It argues that any order to "satisfy" a judgment implies a payment or other transfer of consideration to the creditor which in fact is not taking place. This Court agrees and declines to order a "satisfaction". The real question is whether this Court can or should implement its discharge order and the order avoiding lien by requiring a judgment creditor to cancel a judgment or in some other way indicate the avoidance of the lien in the judgment roll records. The Bankruptcy Court has the authority to do so pursuant to § 524 and § 105 without any limitation imposed by South Carolina Code Annotated § 15-35-630<sup>2</sup>. With the avoidance of the lien pursuant to § 522(f) and upon the granting of the Debtor's discharge pursuant to § 524(a), the judgment, both as a determination of personal liability and as a judicial lien, will be extinguished as a matter of federal law. As mentioned above, the purpose of a Chapter 7

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<sup>2</sup> Additionally, South Carolina Code Annotated § 15-35-650 provides in part that "[a]ll clerks of court shall enter the word "cancelled," together with the signature of such officer, upon the margin or across the indices of judgments when any such judgment is duly cancelled of record by the judgment creditor or his assignee...and the like cancellation shall on the demand of the judgment debtor, or his legal representative, be made on judgments theretofore cancelled of record..."

bankruptcy is to provide a debtor with a “fresh start.” The combination of § 522(f), which allows a debtor to avoid a lien and § 524(a)(1)<sup>3</sup>, which voids any judgment as a determination of personal liability upon discharge, work together to accomplish the “fresh start” objective.

However, whether this Court should order the cancellation of judgment prospectively in anticipation of discharge is another question. In this case, a discharge order has not yet been entered as the period for objecting to discharge has not yet expired. In this Court’s view, prior to discharge, it would be premature for this Court to grant the Debtors’ request. Further, as a practical matter, it appears that the Debtors are just as capable as the creditor of filing a copy of the discharge order or lien avoidance order from the Bankruptcy Court in the state court judgment records. Considering the benefits of the fresh start provided to Debtors in Chapter 7 cases, the equities weigh in favor of a procedure which allows the Debtors to take such action rather than one in which this Court orders a judgment creditor to so act.

At this time in this case, the Court declines to require NationsBank to record any cancellation of judgment or judicial lien in the state court records. It must be noted however, that depending upon the facts of a particular case, a creditor’s intentional effort to preserve a judgment or judicial lien of record after issuance of the discharge or a lien avoidance order by this Court may constitute a violation of the discharge injunction contained in § 524(a).

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<sup>3</sup>Section 524(a) provides in part:

(a) A discharge in a case under this title--

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived...

For all of these reasons, it is therefore

**ORDERED**, that the motion of the Debtors to avoid the lien of NationsBank pursuant to 11 U.S.C. § 522(f) is granted. It is further

**ORDERED**, that the Debtors or any other party in interest may transcribe and file the attached judgment in any court of competent jurisdiction in which the underlying NationsBank's judgment has been recorded to reflect that the NationsBank's lien has been voided.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,

August 13, 1996.

  
UNITED STATES BANKRUPTCY JUDGE